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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91215512
Party	Defendant Cox, David
Correspondence Address	MARK S HUBERT MARK S HUBERT PC 2300 SW FIRST AVE STE 101 PORTLAND, OR 97201-5047 UNITED STATES markhubert@pacifier.com;nicoleh@pacifie
Submission	Opposition/Response to Motion
Filer's Name	Mark S. Hubert, Attorney for Defendant
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Signature	/Mark S. Hubert/
Date	01/29/2015
Attachments	Opposition to Mot to Extend.pdf(4295552 bytes ) Exhibit A.pdf(3166136 bytes ) Exhibit B.pdf(3183016 bytes ) Exhibits C and D for Mot to Extend.pdf(5448986 bytes ) Exhibits E F and G to Motion to Extend.pdf(3251276 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

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BODY VIBE INTERNATIONAL, LLC	:	
	:	
Opposer	:	Opposition Proceeding
	:	No. 91215512
v.	:	
	:	
DAVID COX	:	Serial No. 85966358
	:	
Applicant	:	

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*Re: Trademark Opposition*  
Serial. No. 85966352  
For: DR. VAPE  
By: David Cox  
For: Class 011. Electric Vaporizers

**APPLICANT'S OPPOSITION TO OPPOSER'S MOTION TO EXTEND THE DISCOVERY  
PERIOD**

COMES NOW, David Cox ("Applicant"), by and through his attorney Mark S. Hubert, and files his Opposition to Opposer's Motion to Extend the Discovery Period filed by Body Vibe International, LLC ("Opposer") in the above-identified proceeding.

**Applicant respectfully requests that prior to ruling on Opposer's Motion to Extend the Board read and/or rule on the pending Opposer's Motion for Rule 11 Sanctions and Applicant's Motion for Leave to Amend Answer to Opposer's First Amended Notice of Opposition. The issues are inextricably intertwined and Applicant feels that justice requires a complete understanding of all the motions pending before a ruling on any one can be made.**

Applicant does **not** object to Opposer's Motion to Suspend Opposition Pending Disposition of Currently Outstanding Motions. Applicant acknowledges that it will take some time for the TTAB to rule on the various motions presently before it. To keep litigation costs at a minimum, it would only be logical and fair to both parties to suspend this opposition until such time as they can move forward on this Board's rulings.

**A. Procedural Timeline and Background**

Opposer sets forth a timeline in his motion that lists the following actions by the Opposer (denoted as O) and Applicant (denoted as A). Applicant merely reiterates and puts in a tabular form for ease of searching:

Mar 19, 2014	O Opposition filed
Apr 24, 2014	A Answer filed
Apr 28, 2014	A Amended Answer filed
Jul 25, 2014	O Motion to Amend Opposition filed
Oct 17, 2014	A Answer to Amended Opposition filed
Dec 19, 2014	O Service of Rule 11 Sanction Motion on Applicant
Jan 23, 2015	A Motion to Amend Answer to Amended Opposition filed
Jan 23, 2015	O Motion for Rule 11 Sanctions filed
Jan 23, 2015	O Motion for Extension of Discovery filed
Jan 23, 2015	O Response to Applicant's Motion to Amend Answer filed
Jan 23, 2015	Discovery closes

**B. There is No "Good Cause" to Extend Discovery Period**

Under TBMP 509.01(a) a party may be granted a motion for time to extend for "good cause." Here, no "good cause" exists. The glaring question is "WHY?" Opposer has served his discovery requests on Applicant.

Let's begin with the premise of this opposition. Opposer filed this opposition to registration of Applicant's mark base on Opposer's assertion that they had earlier sales in interstate commerce (See TTAB docket entry # 1 – Notice of Oppsition, Allegation 2) that beat Applicant's stated date of first use by approximately four and one half months. This is not a complicated issue. Either Opposer can prove his first sale with sales receipts, bank deposits, advertisements, shipping documents, purchase orders or affidavits from consumers/distributors, or he can't prove it. Applicant has acknowledged this from day one and does not want to spend money on frivolous litigation. Applicant is more than willing to default or concede the case as soon as Opposer comes up with solid proof of a legitimate first sale.

To date Applicant has not seen this, rather what has been discovered is a complex web of intercompany money transfers, a declaration by a family member, and alleged sales to PO boxes of three companies apparently with no buildings and no internet presence for sales. All this will be revealed in the trial period. All Applicant needs to see is legitimate proof of Opposer's alleged first sale and he will withdraw his application for registration.

On July 25, 2014 Opposer Amended his Notice of Opposition to assert the further ground of unlawful use. Two months after Applicant filed his answer to this, Opposer served his proposed sanctions motion asserting that Applicant's answer to allegation 7



did not meet the requirements of Rule 11. Until this time, there had been no mention of any perceived deficiencies. In an attempt to keep litigation costs down Applicant filed an amended answer at the request of Opposer, only to see Opposer now oppose this amendment. Opposer blames Applicant for creating good cause for this extension but in fact it is because of Opposer's frivolous sanctions motion caused by Opposers poorly worded, compound run-on sentence structure of allegation 7 that created the problem that Opposer now claims requires an extension of the discovery period to remedy.

Opposer has engaged in "gamesmanship" and done whatever he can to delay this trial and run up litigation costs for Applicant. This began with the threat of criminal prosecution and administrative discipline against Applicant and his attorney unless Applicant would withdraw his application for registration. (See Exhibit A) Threatening to gain advantage in this, a civil matter, by threatening criminal prosecution or administrative sanctions is a form of extortion. When done by an attorney, can result in disbarment or a state bar sanction. Such occurred here and is now the subject of a bar complaint with the State of California. (See Exhibit B) If Opposer spent his efforts on the discovery process their motion for an extension would not be necessary.

This Motion For sanctions is another perfect example of wasted time on "gamesmanship" (See TTAB docket entry # 12). Opposer served their proposed Motion for Sanctions to Applicant on Dec 19, 2004 seeking clarification of Applicant's answer to allegation 7 of the Notice of Opposition. (See Exhibit C - Proposed Sanctions Motion) Applicant agreed to do this and sought Opposer's consent, which after a delay in response was then withheld unless Opposer could approve Applicant's wording of the amendment. (See Exhibit D Opposer's Letter dated Jan 9, 2015). Opposer's offer to

withhold his sanctions motion was disingenuous, as he had no intentions of ever withholding it. Rather, Opposer again was conducting “gamesmanship” and trying to run the 21 day Rule 11 “safe harbor” period for sanctions motions so he could file his sanctions motion along with his request to extend discovery without Applicant filing an amended answer. To avoid this from happening, Applicant sought the TTAB’s permission to amend his answer under FRCP 15(a), thereby getting his motion to amend filed before any sanctions motion thereon. That makes it clear to the TTAB that Applicant is doing his best to minimize the pleadings before this Board and proceed to the trial phase as soon as possible. Applicant believes upon the TTAB’s review of Opposer’s clumsy wording of allegation 7, that Applicant did indeed answer within the bounds of Rule 11 in both its original answer and its proposed amended answer. Opposer chides Applicant in his Motion to Extend for this action for it attempting to circumvent his motion.

An extension of time in this case just allows Opposer further time to engage in gamesmanship and drive up litigation costs to the point where Applicant will no longer be able to afford to continue. Opposer had Applicant’s answer in his hand more than two months before he served his perfectly timed sanctions motion based on insufficiency of the answer to allegation 7. Applicant just wants to get to the trial stage. There is no reason for delay.

Before this it was the failure to provide discovery until Applicant threatened filing a Motion to Compel. (See Exhibit E – Opposer’s Dec 19, 2014 Letter to Applicant)

**C. Opposer Exhibited Lack of Diligence and Unnecessary Delay**

TBMP 509.01(a) provides:

*Moreover, a party moving to extend time must demonstrate that the requested extension of time is not necessitated by the party's own lack of diligence or unreasonable delay in taking the required action during the time previously allotted therefor.*

To prevail in a motion to extend time, the moving party has to demonstrate that they have not been guilty of negligence **and** bears the burden of persuading the Board that they were diligent in meeting its responsibilities. *See National Football League v. DNH Management LLC*, 85 USPQ2d 1852, 1854 (TTAB 2008)

This opposition was filed over 10 months ago and discovery opened after the discovery conference held between parties May 29, 2013. Since this time, Applicant served the following discovery requests upon the Opposer (See Exhibit G Applicant's Certificates of Service for Discovery Requests):

Aug 7, 2014	Applicant serves Initial Disclosures
Aug 14, 2014	Applicant serves First Request for Production
Aug 14, 2014	Applicant serves First Request for Interrogatories
Dec 12, 2014	Applicant serves Second Request for Production
Jan 12, 2015	Applicant serves First Request for Admissions
Jan 12, 2015	Applicant serves Second Request for Interrogatories

Opposer, in contrast, in no way has exhibited diligence in conducting his discovery. The deadline for the close of discovery was set for Jan 23, 2015 after an



extension granted at Opposer's request (See TTAB docket entry # 8). **Opposer filed his Initial Disclosures the day before discovery was to close, well beyond the 37 CFR § 2.120(a)(2) due date and on the last possible day, Jan 22, 2015 to allow discovery to be served.** (See Exhibit F Certificate of Service for Opposer's Initial Disclosures)

Pursuant to 37 CFR § 2.120(a)(3), *"a party must make its initial disclosures prior to seeking discovery, absent modification of this requirement by a stipulation of the parties approved by the Board, or a motion granted by the Board or by order of the Board."*

Opposer then served his First Request for Production, First Request for Interrogatories and First Request for Admissions on Jan 23, 2015, one day later, **the day discovery closed.** There was no reason for such delays.

Opposer's lackadaisical approach to discovery is also seen in his response actions. They are currently over two weeks late in responding to Applicant's Second Request for Production. Additionally, Opposer was over two months late in getting his production documents to Applicant after he served his response to Applicant's First request for Production because of an alleged "clerical error in his office." (See Exhibit E Opposer's Letter dated Dec 19, 2014).

Opposer would have TTAB believe their late discovery requests were precipitated by actions of the Applicant. Far from the truth! Opposer could not even file any of their discovery requests until the day discovery closed because of their 10 month late filing of initial disclosures as outlined above.

Opposer claims they "should be permitted to conduct follow up discovery" because they do not know the substance of Applicant's answer at trial. This hogwash is quickly dispelled after a reading of Opposer's Sanctions Motion and Applicant's

Opposition. Only Applicant's answer to Allegation/conclusion 7 was ever in issue. Not the rest of the answer. Additionally, Opposer knew of the "substance" of the answer to allegation 7. Applicant admitted to the existence of the videos, but denied what Opposer concluded the videos proved. This never changed even with Applicant's proposed amendment. Opposer surely could have started their discovery before this was resolved. In fact, Opposer sat on Applicants alleged "deficient answer" for over two months before initiating their sanctions contentions.

#### **D. Conclusion**

Applicant's answer to allegation 7 of the Amended Notice of Opposition has no bearing on Opposer's lack of diligence in securing discovery. Opposer filed their sanction motion on the last possible day, filed their Initial disclosures on the last possible day and their discovery requests on the last possible day. Applicant's Opposition to the Motion for Sanctions points out the frivolity of Opposer's position. Basically, there is much ado about nothing. Certainly, there was no confusion created by Applicant's answer to hinder Opposer's discovery process. In fact, Opposer has served three set of discovery requests pending upon Applicant.


This is a simple case predicated on Opposer's assertion as having the first sale in interstate commerce. This should be extremely simple to prove. There was a later assertion of Applicant's unlawful use in commerce, but Opposer failed to follow up on discovery in this area in a diligent manner because of his unreasonably delay, and now wants an extension to remedy this. Unfortunately, if granted this will drive up the costs for Applicant, possibly to the point of default. Nothing prevented Opposer from



conducting discovery toward their unlawful use in commerce assertions, or in any of the areas for that point.

Opposer has failed to make the minimum showing necessary to establish good cause to extend discovery, and his motion to extend the discovery period should be denied.

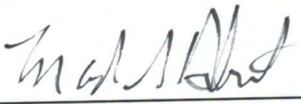
Respectfully submitted this 29<sup>TH</sup> day of January 2015,

By:   
Mark S. Hubert, OSB No. 982564  
Mark S. Hubert P.C.  
2300 SW First Ave, Suite 101  
Portland, OR 97201  
Telephone: (503) 234 7711  
[markhubert@pacifier.com](mailto:markhubert@pacifier.com)  
Attorney for Applicant, David Cox

**CERTIFICATE OF SERVICE**

The undersigned does hereby certify that on this 29<sup>st</sup> day of January 2015, a true and correct copy of this **APPLICANT'S OPPOSITION TO OPPOSER'S MOTION TO EXTEND THE DISCOVERY PERIOD** in Opposition 91215512 has been served upon the Attorney for Opposer by mailing the same by U.S. Mail, first-class, postage paid, to the Attorney at his address of record, as follows:

Thomas P. Philbrick  
Allmark Trademark  
2089 Avy Ave.  
Menlo Park, CA 94025

By:   
Mark S. Hubert, OSB No. 982564  
Mark S. Hubert P.C.  
2300 SW First Ave, Suite 101  
Portland, OR 97201  
Telephone: (503) 234 7711  
[markhubert@pacifier.com](mailto:markhubert@pacifier.com)  
Attorney for Applicant, David Cox

# EXHIBIT A

**Re:** *Trademark Opposition*  
**Serial. No.** 85966352  
**For:** DR. VAPE  
**By:** David Cox  
**For:** Class 011. Electric Vaporizers

Dear Mr. Hubert,

07.21.14

Your client David Cox, through you his attorney of record Mark Hubert, has filed a trademark application at the USPTO with Serial No. 85966352.

BodyVibe International is presently disputing this application filing via the ongoing opposition case No. 91215512.

It has come to my attention that your client's application could be regarded as an "unlawful use" application considering that the product being trademarked is used for human body cannabis inhalation. A considerable amount of evidence has been collected to substantiate this illegal use, even though the Dr. Vape website says the + Dr. Vape vaporizers are only used for nicotine-free glycerin. (see attached evidence)

#### **Unlawful Use**

Although the Board in *Automedx* held that use of a mark in association with the sale of a medical device, *before* the FDA approved it for commercial sale, was trademark "use," trademark applicants should tread lightly in grounding trademark rights on sales of products and services that have not yet crossed all legal hurdles. As a general rule, use of a mark must be legal use to establish trademark rights. This principle would clearly apply, for instance, if the goods or services were themselves illegal—such as an application to register a mark for use on illicit drugs. In such cases, U.S. courts will generally apply the unlawful use doctrine preventing a trademark owner from securing trademark rights from unlawful sales of goods or services.

Even though Oregon has passed Marijuana Legalization Statutes for personal medical use ( see <http://www.katu.com/politics/local/Oregon-State-House-votes-to-legalize-medical-marijuana-dispensaries-212804501.html>. ) the federal government still considers it to be an illegal drug, and as such, all paraphernalia is also illegal under: **21 U.S. Code § 863 - Drug paraphernalia**

#### **(a) In general**

**It is unlawful for any person—**

- (1) to sell or offer for sale drug paraphernalia;**
- (2) to use the mails or any other facility of interstate commerce to transport drug paraphernalia; or**
- (3) to import or export drug paraphernalia.**

#### **(b) Penalties**

**Anyone convicted of an offense under subsection (a) of this section shall be imprisoned for not more than three years and fined under title 18.**

#### **(c) Seizure and forfeiture**

**Any drug paraphernalia involved in any violation of subsection (a) of this section shall be**



subject to seizure and forfeiture upon the conviction of a person for such violation. Any such paraphernalia shall be delivered to the Administrator of General Services, General Services Administration, who may order such paraphernalia destroyed or may authorize its use for law enforcement or educational purposes by Federal, State, or local authorities.

(d) "Drug paraphernalia" defined

The term "drug paraphernalia" means any equipment, product, or material of any kind which is primarily intended or designed for use in manufacturing, compounding, converting, concealing, producing, processing, preparing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance, possession of which is unlawful under this subchapter. It includes items primarily intended or designed for use in ingesting, inhaling, or otherwise introducing marijuana, [1] cocaine, hashish, hashish oil, PCP, methamphetamine, or amphetamines into the human body, such as—

- (1) metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;
- (2) water pipes;
- (3) carburetion tubes and devices;
- (4) smoking and carburetion masks;
- (5) roach clips: meaning objects used to hold burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand;
- (6) miniature spoons with level capacities of one-tenth cubic centimeter or less;
- (7) chamber pipes;
- (8) carburetor pipes;
- (9) electric pipes;
- (10) air-driven pipes;
- (11) chillums;
- (12) bongs;
- (13) ice pipes or chillers;
- (14) wired cigarette papers; or
- (15) cocaine freebase kits.

(e) Matters considered in determination of what constitutes drug paraphernalia  
In determining whether an item constitutes drug paraphernalia, in addition to all other logically relevant factors, the following may be considered:

- (1) instructions, oral or written, provided with the item concerning its use;
- (2) descriptive materials accompanying the item which explain or depict its use;
- (3) national and local advertising concerning its use;
- (4) the manner in which the item is displayed for sale;
- (5) whether the owner, or anyone in control of the item, is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products;
- (6) direct or circumstantial evidence of the ratio of sales of the item(s) to the total sales of the business enterprise;
- (7) the existence and scope of legitimate uses of the item in the community; and
- (8) expert testimony concerning its use.

(f) Exemptions

This section shall not apply to—

- (1) any person authorized by local, State, or Federal law to manufacture, possess, or distribute such items; or



**(2) any item that, in the normal lawful course of business, is imported, exported, transported, or sold through the mail or by any other means, and traditionally intended for use with tobacco products, including any pipe, paper, or accessory.**

David Cox admitted, in his first USPTO response filed by you, his Attorney, on April 24, 2014, that the +Dr. Vape Vaporizer is used for Cannabis inhalation and was sold in interstate commerce which is in direct violation of **21 U.S. Code § 863 - Drug paraphernalia**:

12. Opposer claims that Applicant's mark "Dr. Vape" is likely to cause confusion with Opposer's purported mark "Dr. Vape" but cites no acts by any consumer that support this. Applicant, David Cox, has been selling his cannabis-associated vaporizer in interstate commerce at least as early as May 31, 2013. Applicant cannot find any trade presence of any "Dr. Vape" trademarked electric vaporizer products other than his own in class 011. This includes industry searches for marketing, customer surveys etc. via the internet and trade marketing publications.

Mr. Hubert, you then realized that you had provided **inculpatory evidence** of the felonious acts committed by your client David Cox and subsequently removed the "cannabis-associated vaporizer" wording from the same # 12 response" below:

12. Opposer claims that Applicant's mark "Dr. Vape" is likely to cause confusion with Opposer's purported mark "Dr. Vape" but cites no acts by any consumer that support this. Applicant, David Cox, has been selling his vaporizer in interstate commerce at least as early as May 31, 2013. Applicant cannot find any trade presence of any "Dr. Vape" trademarked electric vaporizer products other than his own in class 011. This includes industry searches for marketing, customer surveys etc. via the internet and trade marketing publications.

Mr. Hubert, your act of removing the cannabis wording from his response in this filed USPTO legal document, supports the conclusion that you have now committed multiple felonies yourself through this act of concealment, including but not limited to:

"Misprision of felony" under 18 U.S.C. § 4

Whoever, having knowledge of the actual commission of a felony cognizable by a court of the United States, conceals and does not as soon as possible make known the same to some judge or other person in civil or military authority under the United States, shall be fined under this title or imprisoned not more than three years, or both.

This offense, however, requires active concealment of a known felony rather than merely failing to report it.

The Federal misprision of felony statute is usually only used in prosecutions against defendants who have a special duty to report a crime, such as a government official.

Mr. Hubert you are an "Officer of the Court" as a bar member of the State of Oregon, and as such, you could be considered to be a government official. See [https://en.wikipedia.org/wiki/Officer\\_of\\_the\\_court](https://en.wikipedia.org/wiki/Officer_of_the_court)

Also, you violated § 550 18 U.S.C. § 2(a). Section 2(b) which makes clear the legislative intent to punish as a principal not only one who directly commits an offense but also one who "aids, abets, counsels, commands, induces or procures" another to commit an offense, but also anyone who causes the doing of an act which if done by him directly would render him guilty of an offense against the United States. It removes all doubt that one who puts in motion or assists in the illegal enterprise or causes the commission of an indispensable element of the offense by an innocent agent or instrumentality is guilty as a principal even though he intentionally refrained from the direct act constituting the completed offense.

In summary, the Dr. Vape application is an unlawful use application and cannot be applied-for as a federal trademark, since the trademarked product, as used in connection with the goods identified in the first opposition response, is not in lawful use in commerce. Trademark Act Sections 1 and 45, 15 U.S.C. §§1051, 1127.

**To qualify for federal trademark registration, the use of a mark in commerce must be lawful. *Gray v. Daffy Dan's Bargaintown*, 823 F.2d 522, 526, 3 USPQ2d 1306, 1308 (Fed. Cir. 1987) (stating that "[a] valid application cannot be filed at all for registration of a mark without 'lawful use in commerce'"); TMEP §907; see *In re Stellar Int'l, Inc.*, 159 USPQ 48, 50-51 (TTAB 1968); *CreAgri, Inc. v. USANA Health Scis., Inc.*, 474 F.3d 626, 630, 81 USPQ2d 1592, 1595 (9th Cir. 2007). Thus, any goods to which the mark is applied must comply with all applicable federal laws. See *In re Midwest Tennis & Track Co.*, 29 USPQ2d 1386, 1386 n.2 (TTAB 1993) (noting that "[i]t is settled that the Trademark Act's requirement of 'use in commerce,' means a 'lawful use in commerce,' and [that the sale or] the shipment of goods in violation of [a] federal statute . . . may not be recognized as the basis for establishing trademark rights'" (quoting *Clorox Co. v. Armour-Dial, Inc.*, 214 USPQ 850, 851 (TTAB 1982))); *In re Pepcom Indus., Inc.*, 192 USPQ 400, 401 (TTAB 1976); TMEP §907.**

**The Controlled Substances Act (CSA) prohibits, among other things, manufacturing, distributing, dispensing, or possessing certain controlled substances, including marijuana and marijuana-based preparations. 21 U.S.C. §§812, 841(a)(1), 844(a); see also 21 U.S.C. §802(16) (defining "[marijuana]"). In addition, the CSA makes it unlawful to sell, offer for sale, or use any facility of interstate commerce to transport drug paraphernalia, i.e., "any equipment, product, or material of any kind which is primarily intended or designed for**



use in manufacturing, compounding, converting, concealing, producing, processing, preparing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance, possession of which is unlawful under [the CSA]." 21 U.S.C. §863.

**NOT IN LAWFUL USE IN COMMERCE – MARIJUANA-RELATED GOODS – BASED ON IDENTIFICATION**

**Based on the above accusations against you Mr. Hubert and your client, David Cox has no standing to even file a Federal TM application or defend the opposition case.**

If you agree with this analysis, I would suggest that you report these crimes to the USPTO administrative judge immediately and abandon the +Dr. Vape USPTO trademark application, otherwise, you could be in violation of the "Misprision of Felony" statutes under 18 U.S.C § 4.

If neither of these actions takes place prior to August 1, 2014. Then I will have to report these felonious acts to the Federal authorities and the Oregon State bar in order to protect myself from prosecution under the "Misprision of Felony" statute 18 U.S.C § 4.

Sincerely,

/Adele Podgorny, R.N. /

Adele Podgorny, R.N.

Managing Member  
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[www.bodyvibeusa.com](http://www.bodyvibeusa.com)

**BODYVIBE**  
INTERNATIONAL

# **EXHIBIT B**

**THE STATE BAR OF CALIFORNIA  
CALIFORNIA ATTORNEY COMPLAINT FORM**

Read instructions before filling in this form.

**Date:**

**(1) Your contact information:**

Your name: Mark S Hubert  
Your address: 1627 NE CLACKAMAS ST  
Your city, state & zip code: PORTLAND OR 97232  
Your email address: markhubert@pacifier.com  
Your telephone numbers:  
Home 503 312 0318 Work 503 234 7711 Cell 503 312 0318

**(2) Attorney's contact information:** Please provide the name, address and telephone number of the attorney(s) you are complaining about. (NOTE: If you are complaining about more than one attorney, include the information requested in items #2 through #7 for each attorney. Use separate sheets if necessary.)

Attorney's name: Thomas P Philbrick  
Attorney's address: 2089 Arty Ave  
Attorney's city, state & zip code: Menlo Park CA 94025  
Attorney's telephone number: 650 233 2789

**(3) Have you or a member of your family complained about this attorney(s) previously?**  
Yes ☐ No ☒

If "Yes", please state to whom the previous complaint was made, approximate date of complaint and disposition.

**(4) Did you employ the attorney?** Yes ☐ No ☒

If "Yes," give the approximate date you employed the attorney(s) and the amount, if any, paid to the attorney(s).

Date employed: \_\_\_\_\_ Amount paid (if any): \$ \_\_\_\_\_

If "No," what is your connection with the attorney(s)? Explain briefly.

opposing counsel in a trademark case



(5) Include with this form (on a separate piece of paper) a statement of what the attorney(s) did or did not do which is the basis of your complaint. Please state the facts as you understand them. Do not include opinions or arguments. If you employed the attorney(s), state what you employed the attorney(s) to do. Sign and date each separate piece of paper. Additional information may be requested. (Attach copies of pertinent documents such as a copy of the fee agreement, cancelled checks or receipts and relevant correspondence.)

(6) If your complaint is about a lawsuit, answer the following, if known:

a. Name of court (For example, Superior or Municipal Court, and name of the county)

Trademark Trial & Appeal Board

b. Title of the suit (For example, Smith v. Jones)

Body Vibe International LLC v David Cox

c. Case number of the suit Opposition Proceeding 91215512

d. Approximate date the suit was filed march 19 / 2014

e. If you are not a party to this suit, what is your connection with it? Explain briefly.

Attorney of Applicant

(7) Size of law firm complained about:

- ☐ 1 Attorney
- ☒ 2 - 10 Attorneys
- ☐ 11 + Attorneys
- ☐ Government Attorney
- ☐ Unknown

Mail to:

Office of the Chief Trial Counsel/Intake  
The State Bar of California  
845 South Figueroa Street  
Los Angeles, California 90017-2515

Signature



**MARK S. HUBERT, P.C.**  
Patent Prosecution & Intellectual Property Litigation

---

2300 SW First Avenue, Suite 101  
Portland, OR 97201  
Telephone and Fax: (503) 234-7711

December 12, 2012

Office of the Chief Trial Counsel/Intake  
State Bar of California  
845 South Figueroa Street,  
Los Angeles, CA 90017-25 15

**RE: Complaint Against California Attorney Thomas P. Philbrick**

I am an attorney licensed in the State of Oregon. I am also registered to practice before the United States Patent and Trademark Office. I am currently defending a client (*applicant*) against an action by a party (*opposer*) that challenges the federal registration of my client's trademark. This action is captioned as follows:

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

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BODY VIBE INTERNATIONAL, LLC	:	
Opposer	:	Opposition Proceeding
	:	No. 91215512
v.	:	
DAVID COX	:	Serial No. 85966358
Applicant	:	

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*Re:* Trademark Opposition  
*Serial. No.* 85966352  
*For:* DR. VAPE  
*By:* David Cox  
*For:* Class 011. Electric Vaporizers

---

Mark S. Hubert\*♦  
markhubert@pacifier.com

Nicole E. Hyatt♦  
nicoleh@pacifier.com

\*Oregon State Bar Member  
♦Registered to Practice Before the USPTO



The opposer is a company owned by Ms. Adele Podgorny, and is represented by a California attorney, Thomas P. Philbrick. In the course of litigation, I believe Mr. Philbrick orchestrated and had a degree of involvement in sending me a letter threatening criminal prosecution as well as administrative or disciplinary charges to obtain an advantage in a civil dispute. Reviewing the California State Bar's ethics opinion 2005-1, I believe that this was in clear violation of your rule of professional conduct, Rule 5-100. The facts are as follows:

The trademark sought is for use with electric vaporizers which is a form of an e-cigarette. One places a fluid inside it and pushes a button. Steam and vapor from the burning material is generated and can be inhaled. Both my client and Mr. Philbrick's client sell these electric vaporizers and both are using the same trademark, *Dr. Vape*. My client had applied for federal trademark registration first, and his client is opposing that registration.

On July 19, 2014, I received an email from Mr. Philbrick's client directly. It was sent captioned as a "Registered Email" which was in a format I was unfamiliar with. (See Exhibit 1 - a screen shot of the Registered Email) On the 21<sup>st</sup> of July I returned to the office from a few days off, and saw the email. Having done enough litigation I recognized that it may have been intended for Mr. Philbrick and accidentally sent to my office. I did not open it but rather immediately called Mr. Philbrick to inform him of what had happened. He told me to go ahead and open it. I attempted to open it but had some difficulties. You will notice at the bottom of the email there is a notation that the attachments were too large to be sent with the email. I called in the computer savvy patent agent in the next office, Ms. Nicole Hyatt, to assist me. I got out of my seat, asked her to sit down and help me open the email, and switched the phone to speakerphone so I could walk around closer to the monitor and still continue talking to Mr. Philbrick.<sup>1</sup> As Ms. Hyatt retrieved the attachments Mr. Philbrick told me that this was indeed sent to me from his client and that "*it had to be sent by my client.*" He then stated that he "*had done the research for her.*" (See Exhibits 3 and 4 - Declarations of Support)

When Ms. Hyatt got the email opened, it contained the following:

- A letter addressed to me
- An mp4 video file
- A twitter account screen capture
- A facebook screen capture
- Two advertisement screen captures
- A copy of an answer filed before the TTAB
- A copy of an amended answer file before the TTAB

Of particular notice was the letter addressed to me. (See Exhibit 5) It accused me of multiple felonies for filing a trademark application on behalf of my client. This letter threatened to report me to both the federal authorities and to the Oregon State Bar unless my client abandoned the Dr. Vape trademark application, thus terminating the legal action before the

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<sup>1</sup> It may be helpful to note that my computer screen is a 42" monitor mounted on the wall, which is why I had Ms. Hyatt sit down while I could walk around to view what was on the screen, while still talking to Mr. Philbrick. (See Exhibit 2 - a photo of my computer monitor system)



Trademark Trial and Appeal Board and allowing Mr. Philbrick's client to obtain the Dr. Vape trademark. Clearly, the letter threatened criminal prosecution and administrative/disciplinary charges against me before the federal authorities and my state bar to obtain an advantage in a civil dispute. This was in clear violation of your rule of professional conduct, Rule 5-100.

Indeed, on August 4, 2014 Ms. Podgorny did report this to the Oregon State Bar. (See Exhibit 6 – a copy of the complaint filed) The Oregon State bar reviewed then dismissed the complaint stating, "*the evidence you have provided does not support an allegation that Mr. Hubert has committed a crime.*" (See Exhibit 7 a copy of the Oregon State Bar's complaint dismissal letter.)

This was clearly an action orchestrated by the opposer's attorney, Thomas Philbrick. By Mr. Philbrick's own admissions "*he did the legal research for her*" although the actual transmission of the threat "*had to come from her.*" I believe that his idea originated from Mr. Philbrick and he informed the client as such clearly explaining that he was prohibited from making such a threat directly to me because of an ethical rule of conduct. He then did the research and emailed it to her – which she then pasted into her letter.<sup>2</sup> In reviewing your ethics opinion 2005-1 what Mr. Philbrick did evidences increasing degrees of involvement to such a level that it can be considered he indirectly communicated a threat in violation of Rule 5-100.

In all fairness to me, may I suggest discuss this with Ms. Adele Podgorny before making contact with Mr. Philbrick and asking her why she filled the letter of complaint against me at the Oregon State Bar, how she knew to do so, where she got here legal research, and most importantly, how did she knew what to say. I feel confident that you will see that Mr. Thomas Philbrick orchestrated the entire matter and had a degree of involvement far beyond that proscribed by Rule of Professional Conduct 5-100 such that he can be considered an indirect participant in the threatening communication. Her contact information is as follows:

Ms Adele Podgorny  
11445 E. Via Linda Street #2626,  
Scottsdale, Arizona 85259  
714 – 267-0340.

I thank you for your time.

  
Mark S. Hubert

---

<sup>2</sup> This would explain the mixed fonts, underlining, bolding and sizes of font in the letter.

# EXHIBIT C



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In re application serial no. 85966358

Filed on June 21, 2013

BODY VIBE INTERNATIONAL, LLC

Opposer,

v.

Cox, David

Applicant.

)  
)  
)  
) Opposition No. 91215512  
)  
) Opposed Mark: DR. VAPE  
)  
)  
)  
)  
)

Trademark Trial and Appeal Board  
United States Patent and Trademark Office  
P.O. Box 1451  
Alexandria, VA 22313-1451

**OPPOSER'S MOTION FOR RULE 11 SANCTIONS WITH REGARD TO  
APPLICANT'S ANSWER FILED ON OCTOBER 17, 2014**

BODY VIBE INTERNATIONAL, LLC, a limited liability company legally organized under the laws of New Mexico, with a principal place of business of 11445 E. Via Linda, Suite 2626, Scottsdale, AZ 85259, (hereinafter "Opposer"), hereby moves the Trademark Trial and Appeal Board (the "Board") for the imposition of Rule 11 sanctions against Applicant and his attorney for the improper pleadings contained in Applicant's Answer to Opposer's first amended opposition that was filed with the Board on October 17, 2014. (See TBMP §527.02)

**A. GOVERNING LAW:**

527.02 Motion for Fed. R. Civ. P. 11 Sanctions



Fed. R. Civ. P. 11...(b) Representations to Court.

By presenting to the court a pleading, written motion, or other paper --whether by signing, filing, submitting, or later advocating it an attorney or unrepresented party certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

- (1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;
- (2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;
- (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and
- (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information.

(NOTE: Bold and underline added for emphasis.)

**B. Analysis of Applicant's Averments that Violate Rule 11**

In Opposer's First Amended Notice of Opposition which was filed at the Board on July 25, 2014 and approved via Board Order on October 3, 2014, a series of averments were made in Paragraph 7 under "COUNT TWO" that relate to Applicant's YouTube and FaceBook postings. (See full text of Opposer's First Amended Opposition attached as **Exhibit A**) These averments discuss a YouTube video that appears to depict Applicant David Cox pitching his DR. VAPE branded goods at a marijuana convention in Oregon. If true, this evidence would support Opposer's allegation that Applicant's goods are not in lawful use in commerce. Further, Opposer alleges in Paragraph 7 of its amended opposition that the "attached Exhibit B" depicts Applicant's FaceBook page that discusses a "Bud of the Month" club. If true, this evidence would further support Opposer's "unlawful use in commerce" claim as it would be quite unusual for a company to promote varieties of marijuana if the underlying products sold were not intended for use with it. In short, it would be nonsensical for a business to promote the use of marijuana if its goods were not related to this market in any way.



In its answer to paragraph 7 of the amended notice of opposition, Applicant's response consisted of the following statements....

"Admit the existence of said YouTube video. Deny Applicant's device is marketed and sold primarily for use with cannabis." (See attached **Exhibit B** which is a copy of Applicant's complete answer to Opposer's first amended opposition.)

The above referenced response violates Rule 11 for several reasons. First, via this answer which was signed by Applicant's attorney, when only admitting the "existence" of the YouTube video, Applicant is not answering the averment with an affirmative or negative response, or a lack of information or belief denial. The video either depicts the Applicant David Cox or it does not and it either depicts him marketing his Dr. Vape branded goods at a marijuana conference or it does not. There is no in between answer to paragraph 7 of the amended notice of opposition and Applicant should be expected to provide a good faith substantive response to the allegation under the TTAB rules. By attempting to dodge the averment in the opposition, Applicant is presenting the answer for the improper purpose of increasing delays and costs associated with the litigation. Opposer should have a substantive affirmative or negative answer to the averment, however, at present it must conduct costly discovery and/or depositions to confirm its suspicions.

Second, via a subtle answer contained in Applicant's answer to amended notice of opposition labeled "paragraph 15," it has apparently expressly denied that the asserted YouTube video depicts the Applicant David Cox at a marijuana convention. Apparently, it has also expressly denied that the asserted Facebook postings are from the Applicant and promote the use of cannabis with Applicant's goods. The Applicant's paragraph 15 averment reads as follows....

"Applicant denies any allegations in the Opposition that have not been explicitly admitted."



This answer clearly violates rule 11 because the YouTube video and Facebook posts appear to clearly be attributable to the Applicant. Such an answer is frivolous and violates Rule 11 as it is a denial of "factual contention not warranted by the evidence." There are no specific denials of the Facebook postings or the person depicted in the YouTube video of amended opposition paragraph 7, so this automatically triggers Applicant's paragraph 15 "catch-all denial clause" that apparently denies anything not explicitly admitted. On information and belief, this is Applicant's attempt to deceive the Board and the Opposer with a subtle express denial of certain things it knows to be true. Opposer is entitled to a clear answer of the averments such as "admitted, the attached YouTube video depicts Applicant selling his merchandise at a marijuana convention," or "denied, the video does not depict the Applicant." At present, given the paragraph 15 "catch-all denial," it is unclear as to whether Applicant has expressly denied the averments in paragraph 7. Such gamesmanship is impermissible under Rule 11 as the deceptive response avers facts that are not supported by evidence.

### **C. Relief Requested**

In view of the above outlined arguments and evidence, Opposer respectfully requests an order from the Board that instructs the Applicant to respond as follows.....

1. Provide a specific on the record admission or denial of all allegations in paragraph 7 of Opposer's amended notice of opposition. The answer must directly answer the allegation and state whether the video depicts the Applicant, whether the video depicts Applicant at a marijuana conference with his Dr. Vape branded goods and whether the attached FaceBook page depicts Applicant's usage of the Dr. Vape mark in connection with a "bud of the month." Opposer will

agree to not file this motion with the Board should Applicant file such an amended answer within the time allotted under Board rules.

2. Should the Applicant not agree to file an amended answer bringing its answer into conformity with TTAB rules (Rule 11 included), Opposer respectfully requests that the opposition be sustained in its favor and that such a terminating sanction be promptly issued by the Board.

DATED this 19<sup>th</sup> day of December, 2014.

Respectfully submitted,

BODY VIBE INTERNATIONAL, LLC

By: 

Thomas P. Philbrick, Esq.  
John E. Russell, Esq.  
Attorneys for Opposer

ALLMARK TRADEMARK®  
2089 Avy Ave.  
Menlo Park, CA 94025


Telephone: (650)233-2789  
Facsimile: (650)233-2791  
Email: tom@allmarktrademark.com  
allmarktrademark@gmail.com



### CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing **OPPOSER'S MOTION FOR RULE 11 SANCTIONS WITH REGARD TO APPLICANT'S ANSWER FILED ON OCTOBER 17, 2014** has been served on Applicant's attorney of record by mailing said copy on December 19, 2014 via First Class Mail, postage fully prepaid to:

Mark S. Hubert, P.C.  
Attn: Mark S. Hubert, Esq.  
2300 SW First Ave., Suite 101  
Portland, OR 97201

By: 

Thomas P. Philbrick

Dated: December 19, 2014



# EXHIBIT D

## **ALLMARK TRADEMARK ®**

*2089 Avy Ave.  
Menlo Park, CA 94025  
Telephone: 650-233-2789  
Fax: 650-233-2791*

January 9, 2015

**VIA FIRST CLASS MAIL and EMAIL TO markhubert@pacifier.com**

Mark S. Hubert, P.C.  
Attn: Mark S. Hubert, Esq.  
2300 SW 1<sup>st</sup> Ave., Suite 101  
Portland, OR 97201

**Re: David Cox's request for permission to file Amended Answer Pleading in Dr.  
Vape trademark opposition number 91215512**

Dear Mr. Hubert,

We are in receipt of your December 30, 2014 letter with the caption of "RE: Permission to File Amended Pleading." We appreciate your apparent willingness to attempt to resolve the Rule 11 violations contained in your October 17, 2014 answer to first amended opposition. However, your December 30<sup>th</sup> letter only indicates a willingness to amend the answer relating to the referenced FaceBook allegation. While certainly one of the problems with your amended answer, it certainly isn't the only violation as discussed in our draft motion for Rule 11 sanctions.

Our concern with simply granting my client's unconditional consent for you to file an amended answer is that given your December 30<sup>th</sup> letter, your amended answer sounds like it would almost certainly contain what in our view are similar and/or identical Rule 11 violations with perhaps the only cure being in relation to the allegation regarding your clients FaceBook page. This would leave my client in the predicament of seeing your amended answer only upon its filing and then having to draft a different and revised Rule 11 motion for service on your office, with a renewed waiting period before service at the TTAB. This obviously isn't practical nor what is contemplated under the Rule 11 procedure.

In an effort to avoid the anticipated merry-go-round of revised and resubmitted Rule 11 Motions, Body Vibe suggests what it believes to be a reasonable compromise. In an effort to resolve this Rule 11 issue short of TTAB intervention, Body Vibe requests that it be permitted to review your proposed amended answer draft before it is submitted at the TTAB. If Body Vibe believes the Rule 11 issues to be cured in the draft amended answer, then it will provide its consent for the filing of the amended answer. On the

other hand, if any of the Rule 11 issues outlined in its draft motion for Rule 11 sanctions remain, then it will not provide its consent and will instead proceed with the filing of the motion at the TTAB.

To be clear, under Rule 11, Body Vibe is entitled to admissions or denials of the allegations in paragraph 7 that are presented in a good faith manner, not simply evasive statements such as "said YouTube video exists." To comply with the spirit of Rule 11, everything contained in paragraph 7 needs to be expressly admitted or denied in a clear manner so that Body Vibe knows where Mr. Cox stands. Further, Mr. Cox's catch-all denial in paragraph 15 of its October 17<sup>th</sup> answer needs to be clarified to determine if he is denying significant portions of Body Vibe's paragraph 7 of its amended notice of opposition.

We trust that Mr. Cox is agreeable to Body Vibe's request to review the proposed amended answer before consent to file can be contemplated. Please provide your response and the amended answer draft by 5pm Pacific Time on January 14<sup>th</sup>, otherwise Body Vibe will proceed with the filing of the Rule 11 motion with the TTAB. Please call or email with any follow up questions that you may have. Thank you.

Sincerely,



Thomas P. Philbrick, Esq.

John E. Russell, Esq.

ALLMARK TRADEMARK ®

Attorneys for Body Vibe  
International, LLC

Phone: (650)233-2789

Email: tom@allmarktrademark.com

CC: Body Vibe International, LLC



**CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of the foregoing **OPPOSER'S MOTION FOR RULE 11 SANCTIONS AGAINST APPLICANT WITH RESPECT TO ANSWER FILED OCTOBER 17, 2014** has been served on Applicant's attorney of record by mailing said copy on January 23, 2015 via First Class Mail, postage fully prepaid to:

Mark S. Hubert, P.C.  
Attn: Mark S. Hubert, Esq.  
2300 SW First Ave., Suite 101  
Portland, OR 97201

By: 

Thomas P. Philbrick

Dated: 01/23/2015

# **EXHIBIT E**

## **ALLMARK TRADEMARK ®**

*2089 Avy Ave.  
Menlo Park, CA 94025  
Telephone: 650-233-2789  
Fax: 650-233-2791*

December 19, 2014

**VIA 1<sup>ST</sup> CLASS U.S. MAIL and VIA EMAIL TO [markhubert@pacifier.com](mailto:markhubert@pacifier.com)**

MARK S. HUBERT, P.C.  
Attn: Mark S. Hubert, Esq.  
2300 SW First Avenue, Suite 101  
Portland, OR 97201

**Re: Your Letter Dated December 12, 2014 re: Dr. Vape discovery responses submitted on behalf of Body Vibe International, LLC (TTAB Opposition Number 91215512)**

Dear Mr. Hubert,

We are in receipt of your 1<sup>st</sup> class letter dated December 12, 2014 that was received in our office on Wednesday, December 17, 2014. (The letter was sent via 1<sup>st</sup> class mail without an email courtesy copy so our office has been in receipt for a total of two business days.)

With regard to your request regarding a protective order, Opposer realizes that per TMEP 412.01 the Board's standard protective order is automatically in place as of the commencement of the action. As such, Opposer will designate as confidential document productions it believes should be subject to the protective order.

Opposer also notes that due to a clerical error in its attorney's office, the document productions indicated as forthcoming in its responses served on October 2, 2014 were not timely forwarded to your office. We apologize for this error, and have mailed the responsive documents to your office today and have also attached them as a PDF courtesy copy to an email version of this letter. We do note however that our office



has received no correspondence from your office regarding the lack of a timely document production until your 1<sup>st</sup> class letter received in our office on December 17, 2014, over two months after the discovery responses were served on your office. As such, until now, Opposer has had no reason to believe that a possible discovery dispute had arisen. Opposer would like to remind Applicant that TBMP 523.02 requires that an attorney make a "good faith" effort to resolve the differences involved in a discovery dispute prior to filing the threatened motion to compel. Opposer is confident that the premature filing of a motion to compel 2 or 3 business days after the receipt of the first communication pointing out a potential dispute, would be denied by the Board as the document production has not yet even been reviewed by Applicant or his counsel.

After your review of the enclosed document production, please indicate if you deem the asserted inadequacy of responses issue to be resolved or if any responses remain wanting in your opinion. Upon receipt of your reply, we can then evaluate whether we truly have a potential discovery dispute that could be the subject of a motion to the Board. We are confident that the asserted discovery issues can be resolved without the need for Board intervention.

Sincerely,



Thomas P. Philbrick, Esq.  
John E. Russell, Esq.  
ALLMARK TRADEMARK ®  
Attorneys for BODY VIBE  
INTERNATIONAL, LLC  
Phone: (650)233-2789  
Email: tom@allmarktrademark.com

CC: BODY VIBE INTERNATIONAL, LLC

# **EXHIBIT F**

## CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing **OPPOSER'S INITIAL DISCLOSURES** has been served on Applicant's attorney of record by mailing said copy on January 22, 2015 via First Class Mail (certified), postage fully prepaid to:

Mark S. Hubert, P.C.  
Attn: Mark S. Hubert, Esq.  
2300 SW First Ave., Suite 101  
Portland, OR 97201

By: 

Thomas P. Philbrick

Dated: 01/22/2015




# **EXHIBIT G**

**CERTIFICATE OF SERVICE**

The undersigned does hereby certify that on this 14<sup>th</sup> day of August 2014, a true and correct copy of this "APPLICANT'S FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS TO OPPOSER" has been served upon the Attorney for Opposer by mailing the same by U.S. Mail, first-class, postage paid, to the Attorney at his address of record, as follows:

Thomas P. Philbrick  
Allmark trademark  
2089 Avy Ave.  
Menlo Park, CA 94025  
tom@allmarktrademark.com

By:   
Mark S. Hubert  
Oregon State Bar 982561  
Attorney for Applicant/Respondent David Cox

### **CERTIFICATE OF SERVICE**

The undersigned does hereby certify that on this 12<sup>th</sup> day of December 2014, a true and correct copy of this "APPLICANT'S SECOND SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS TO OPPOSER" and a Protective Order (entitled "PROVISIONS FOR PROTECTING CONFIDENTIALITY OF INFORMATION REVEALED DURING BOARD PROCEEDING") signed by applicant's attorney, has been served upon the Attorney for Opposer by mailing the same by U.S. Mail, first-class, postage paid, to the Attorney at his address of record, as follows:

Thomas P. Philbrick  
Allmark trademark  
2089 Avy Ave.  
Menlo Park, CA 94025  
tom@allmarktrademark.com

By:  
Mark S. Hubert  
Oregon State Bar 982561  
Attorney for Applicant/Respondent David Cox



**CERTIFICATE OF SERVICE**

The undersigned does hereby certify that on this 12<sup>th</sup> day of January 2015, a true and correct copy of this "APPLICANT'S FIRST SET OF REQUESTS FOR ADMISSIONS TO OPPOSER" signed by applicant's attorney, has been served upon the Attorney for Opposer by mailing the same by U.S. Mail, first-class, postage paid, to the Attorney at his address of record, as follows:

Thomas P. Philbrick  
Allmark trademark  
2089 Avy Ave.  
Menlo Park, CA 94025

with a follow up courtesy copy sent by email to:

tom@allmarktrademark.com

By:



---

Mark S. Hubert  
Oregon State Bar 982561  
Attorney for Applicant/Respondent David Cox

**CERTIFICATE OF SERVICE**

The undersigned does hereby certify that on this 12<sup>th</sup> day of January 2015, a true and correct copy of this "APPLICANT'S THIRD SET OF INTERROGATORIES TO OPPOSER" has been served upon the Attorney for Opposer by mailing the same by U.S. Mail, first-class, postage paid, to the Attorney at his address of record, as follows:

Thomas P. Philbrick  
Allmark trademark  
2089 Avy Ave.  
Menlo Park, CA 94025  
tom@allmarktrademark.com

By: 

Mark S. Hubert  
Oregon State Bar 982561  
Attorney for Applicant/Respondent David Cox